

Entered on Docket  
October 28, 2014  
EDWARD J. EMMONS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



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3 IT IS SO ORDERED.  
4 Signed October 28, 2014  
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*Arthur S. Weissbrodt*

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10 Arthur S. Weissbrodt  
11 U.S. Bankruptcy Judge  
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16 UNITED STATES BANKRUPTCY COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
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20 In re ] Case No. 12-50227-ASW  
21 OCTAVIO CASAS and MICHELLE }  
22 ALLISON SCOTT-CASAS, ] Chapter 13  
23 ] Debtors. ] Date: September 5, 2014  
24 ] Time: 9:30 a.m.  
25  
26

27 MEMORANDUM DECISION GRANTING MOTION TO VALUE  
28 PROPERTY AND TO AVOID LIEN

29 This matter comes before the Court on a motion filed by the  
30 Debtors, Octavio Casas and Michelle Allison Scott-Casas, asking the  
31 Court to value the Debtors' residence located at 2250 Monroe Street  
32 #179, Santa Clara, California ("the Property"), for purposes of  
33 avoiding a junior lien held by Creditor JPMorgan Chase Bank, NA  
34 ("the Creditor"). At an evidentiary hearing held on September 5,  
35 2014, the Debtors were represented by attorney Paul Seabrook.<sup>1</sup> The  
36 Creditor was represented by attorney Jonathan Damen.

37  
38 <sup>1</sup> The Debtors' counsel of record is Theresia Sandhu, but Ms.  
39 Sandhu did not appear at the hearing. Mr. Seabrook, who works with  
40 Ms. Sandhu, appeared in lieu of Ms. Sandhu.  
41  
42

1       The parties agree that the Property is subject to a senior  
2 lien held by Wells Fargo Bank in the unpaid amount of \$186,166.81.  
3 At the hearing, both sides presented evidence of the Property's  
4 value relative to the senior lien. In addition to offering  
5 testimony from Debtor Michelle Allison Scott-Casas, the Debtors  
6 offered testimony from Mr. Zaid Hanna, a real estate agent and  
7 broker, that the Property had a value of \$183,000 on the petition  
8 date -- which is \$3,166.81 less than the amount owed to Wells Fargo  
9 Bank. By contrast, the Creditor offered testimony from licensed  
10 appraiser Mr. Denis DeSaix that the Property had a value of  
11 \$193,000 on the petition date -- which is \$6,833.19 more than the  
12 amount owed to Wells Fargo Bank. Both sides also filed briefs  
13 prior to the hearing.

14       For the reasons which follow, the Court is not persuaded that  
15 the value of the Property on the petition date was greater than  
16 \$186,166.81. Therefore, the Debtors' motion seeking to avoid the  
17 junior lien is granted. This Memorandum Decision constitutes the  
18 Court's findings of fact and conclusions of law, pursuant to Rule  
19 7052 of the Federal Rules of Bankruptcy Procedure.

20

21       **I. Findings of Fact**

22       The Debtors filed a petition under chapter 13 of the  
23 Bankruptcy Code on January 12, 2012. When the petition was filed  
24 and thereafter, the Debtors resided at the Property.

25       As discussed supra, the unpaid amount of the senior lien held  
26 by Wells Fargo Bank is \$186,166.81. The Creditor's proof of claim  
27 filed in this case is premised on a junior lien in the amount of  
28 \$101,812.17. The claim is silent as to the value of the Property.

1                   **A. Testimony of Ms. Scott-Casas**

2               Ms. Scott-Casas testified about the Property, which the  
3 Debtors purchased in May 2004. The Property is a one-bedroom, one-  
4 bathroom condominium measuring approximately 714 square feet.<sup>2</sup>  
5 Originally, the Property was an apartment, but at some point before  
6 the Debtors bought the Property, the apartments in the complex were  
7 converted into condominiums. The Debtors have lived in the  
8 Property since May 2004, and currently reside there with two  
9 daughters aged 11 and 13.

10             Ms. Scott-Casas stated that it is challenging for four people  
11 to live in such a compact space and discussed the condition of --  
12 and "wear and tear" on -- the Property as of the date when the  
13 petition was filed. On the petition date, the carpet was original  
14 to the Property and was buckling and stained, particularly in the  
15 high traffic areas. Also, there was a loose door knob with a  
16 broken locking mechanism, there were electrical problems involving  
17 the ceiling fan and some electrical outlets, and there was water  
18 damage in the hallway under the carpet where a washing machine had  
19 flooded. Ms. Scott-Casas acknowledged that some other units had  
20 electrical issues, as well, but did not specify any. The Property  
21 also had plumbing issues with a sink and bathtub, which "backed up"  
22 regularly.

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23             <sup>2</sup> During the hearing, there was some discussion about whether  
24 the Property was actually 714 square feet. The Creditor's  
25 appraiser measured the Property at 674 square feet, but the  
26 appraiser thought that if the patio area were included, then the  
27 square footage would be over 700. The actual square footage,  
however, is not relevant, because the comparable properties  
considered by both parties' witnesses shared floor plans identical  
to the Property.

1 Ms. Scott-Casas also testified about a mold problem at the  
2 Property which existed when the petition was filed and still  
3 existed at the time of the hearing. Ms. Scott-Casas reported that  
4 the mold issue was related, in part, to the 27-year old, single-  
5 paned windows which were original to the Property. Moisture  
6 collected on the windows, window frames, and sills, and Ms. Scott-  
7 Casas frequently wiped the moisture from these areas. Ms. Scott-  
8 Casas testified that there was visible mold growing in six areas:  
9 near the windows, by the sliding glass doors, and in the bedroom.  
10 To address the mold, Ms. Scott-Casas sprayed a bleach mixture and  
11 moved the children's bunk bed away from one of the moldy areas.

12 Ms. Scott-Casas reported that on September 4, 2014, the day  
13 before the hearing, a mold specialist came to the Property. After  
14 a 40-minute inspection, the mold specialist confirmed the presence  
15 of mold in the six different areas. The mold specialist did not  
16 testify at the hearing, but Ms. Scott-Casas testified that the  
17 specialist sent Ms. Scott-Casas an e-mail containing a general  
18 estimate for the cost of repair. The e-mail, which was offered and  
19 admitted into evidence, was written by Don Chamberlin, South Bay  
20 Project Manager, and states: "Mold is present on the window  
21 framework in the Living Room, Dining Room, Kitchen and the Bedroom.  
22 Mold is also present on the ceiling above the tub/shower in the  
23 bathroom. In the bedroom mold is growing on the drywall at the  
24 corner of the exterior and interior wall." The mold specialist  
25 estimated the cost of mold remediation to be \$4,000 to \$5,000. Ms.  
26 Scott-Casas explained that this estimate did not include \$1,500 for  
27 drywall replacement, repair, and painting.

28

1       Ms. Scott-Casas stated that at one time, there had been an  
2 opportunity to upgrade the windows from single-paned to double-  
3 paned windows at a cost of \$8,000,<sup>3</sup> and that many units in the  
4 complex had taken advantage of that opportunity. However, Ms.  
5 Scott-Casas stated that the Debtors could not afford the upgrade  
6 when it was offered.

7

8                   **B. Testimony of Zaid Hanna**

9       The Debtors called Zaid Hanna, a real estate agent and broker,  
10 to testify about the value of the Property. Mr. Hanna has been a  
11 real estate agent with Intero Real Estate Services for more than 10  
12 years, and has been a broker since 2008. As an agent, Mr. Hanna  
13 has worked on an average of 30 to 45 real estate transactions per  
14 year.

15       Mr. Hanna is not a licensed appraiser, has no appraiser  
16 certifications, and has not been trained as an appraiser. However,  
17 in his role as an agent and in every real estate transaction, Mr.  
18 Hanna assesses the value of real estate on behalf of his clients.  
19 Approximately 10% of Mr. Hanna's training as an agent involved  
20 learning how to value property. Mr. Hanna explained that when Mr.  
21 Hanna assesses value for a particular property, Mr. Hanna looks at  
22 the property being assessed, looks for disclosures about the  
23 property made during inspections, then looks at sales of comparable  
24 properties for the 90-day period before the valuation date.

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26       <sup>3</sup> The offer to upgrade the windows at a cost of \$8,000 was not  
27 discussed in detail, but it appears to have been a special price  
28 offered to all property owners within the complex. It is not clear  
how many windows would have been replaced or what quality windows  
would have been installed for that price. It is entirely possible  
that an owner would have to pay more than \$8,000 to have the  
windows upgraded outside the special offer.

1       For purposes of valuing the Property, Mr. Hanna visited the  
2 Property on March 14, 2014. Mr. Hanna concluded that the Property  
3 was in below-average condition; there was mold and mildew, there  
4 was damage to the entrance door, there was quite a bit of wear and  
5 tear on the carpet, and the Property was cluttered. During Mr.  
6 Hanna's visit, Ms. Scott-Casas called Mr. Hanna's attention to an  
7 electrical problem in the kitchen, an issue with a broken door  
8 knob, discoloration by the window sills and in the bathroom, the  
9 mildew and mold in numerous places, and a lack of ventilation in  
10 the bathroom. Ms. Scott-Casas told Mr. Hanna that all of these  
11 problems were present at the Property in January 2012.

12       Mr. Hanna admitted that Mr. Hanna is not an expert on mold,  
13 but stated that such discoloration is, in his experience, usually a  
14 fungus. Mr. Hanna thought that replacement of the single-paned  
15 windows with double-paned windows would alleviate the problem,  
16 along with an application of mold-killing fungicide. Mr. Hanna  
17 acknowledged that the installation of double-paned windows would be  
18 considered an upgrade, and that other owners might have elected to  
19 upgrade the windows to reduce noise or to prevent mold damage. Mr.  
20 Hanna also stated that the ventilation in the bathroom needed to be  
21 improved.

22       Mr. Hanna stated that he would not recommend a unit with mold  
23 to a buyer-client if there were an available unit without mold, and  
24 that Mr. Hanna would recommend exploring other options to such a  
25 buyer. However, if there were no other options, then Mr. Hanna  
26 would determine the cost of repairs and would factor that cost into  
27 any offer to buy a property.

28

1       Mr. Hanna prepared a Broker's Price Opinion ("the BPO") for  
2 the Property. The BPO was offered and admitted into evidence. Mr.  
3 Hanna explained that the BPO analyzes several comparable  
4 properties, as does an appraisal. However, a BPO is not a formal  
5 appraisal and is less detailed than an appraisal. Mr. Hanna also  
6 explained that, unlike an appraisal, a BPO generally is used to  
7 determine a property's list price and recommended sale price,  
8 rather than after a contract to sell/buy real estate is entered.

9       Mr. Hanna's BPO covered the period of September 1, 2011  
10 through December 31, 2011. In the BPO, Mr. Hanna used three prior  
11 sales for comparison -- properties which sold before the bankruptcy  
12 petition date. All three comparable properties (or comparables)  
13 were located within the same complex as the Property, had an  
14 address of 2250 Monroe Street in Santa Clara, California, and had  
15 identical floor plans and square footage to the Property. All  
16 three comparables also involved "as is" short sales. According to  
17 the BPO, the Property is located on the ground floor. Mr. Hanna  
18 did not specify whether the comparables were also on the ground  
19 floor, although other evidence showed that only one was a ground  
20 floor unit.<sup>4</sup>

21       The first comparable property ("Hanna 1") was Unit 135. Hanna  
22 1 was originally listed for sale at a price of \$195,000, but it  
23 sold for \$193,000 on September 26, 2011. The second comparable  
24 property ("Hanna 2") was Unit 244. Hanna 2 sold above its \$190,000  
25 list price for \$193,500 on September 8, 2011. The third comparable

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26       <sup>4</sup> The Creditor's appraiser testified that only the first of  
27 Mr. Hanna's comparables was located on the ground floor, but that  
28 the other two comparables were located on the second floor.

1 property ("Hanna 3") was Unit 221. Hanna 3 had a list price of  
2 \$170,000, but it sold for \$185,000 on September 3, 2011.

According to the BPO, all three comparables were in "good" condition, whereas the Property was in "poor" condition. Mr. Hanna did not explain, specifically, how Mr. Hanna determined the condition of each comparable. In fact, Mr. Hanna admitted that Mr. Hanna did not know whether the comparables had issues similar to those at the Property.<sup>5</sup> However, the MLS listing for Hanna 1 -- on which Mr. Hanna relied as a data source in preparing his BPO -- described Hanna 1 as being in "excellent condition."

11       Mr. Hanna estimated that the cost of repairing all of the  
12 deferred-maintenance problems at the Property would total \$8,025,  
13 and Mr. Hanna adjusted the value of the comparables downward by  
14 \$8,000 to account for this estimated cost. In deriving the \$8,025  
15 cost of repairs, Mr. Hanna assumed that it would cost \$3,000 to  
16 replace the windows in the living room and bedroom with dual-paned  
17 windows.<sup>6</sup> Mr. Hanna based this estimate on Mr. Hanna's experience  
18 in working with investors who "flip" properties. Mr. Hanna is not  
19 a licensed contractor, but Mr. Hanna stated that buyers have relied  
20 on Mr. Hanna to estimate repair costs for distressed properties in  
21 approximately 35 different transactions. The BPO also estimated  
22 the following repair costs: \$1,100 for mold in the bathroom wall;

24       <sup>5</sup> The Court understands that, as a matter of standard  
25 practice, appraisers and those giving BPOs usually do not or cannot  
inspect comparable properties to determine their actual condition  
inside.

<sup>6</sup> Mr. Hanna did not reconcile this \$3,000 estimate with the \$8,000 window replacement offer which had been made to property owners within the complex. His \$3,000 estimate probably was significantly understated.

1 \$850 for water damage to the entrance door; \$850 for electrical  
2 issues in the kitchen; \$75 for the door knob; \$100 for a baseboard;  
3 \$1,400 for the carpets; \$250 for the ceiling fan; and \$400 for a  
4 broken garbage disposal.

5 Based on Mr. Hanna's analysis, Mr. Hanna determined that the  
6 value of the Property in January 2012 was \$183,000. Mr. Hanna  
7 noted that if the Property had been sold at that time, it would  
8 have been in an "as is" short sale, and that a high percentage of  
9 sales at that time were "as is" short sales. In Mr. Hanna's  
10 estimation, 75% to 80% of sales in January 2012 were "as is" short  
11 sales. Mr. Hanna also believed that the Property would have sold  
12 for \$183,000.

13

14 **C. Testimony of Denis DeSaix**

15 The Creditor called Denis DeSaix, a licensed real estate  
16 appraiser, to testify about the value of the Property. Mr. DeSaix  
17 has worked as a real estate appraiser for more than 20 years, and  
18 has received significant training as an appraiser. Mr. DeSaix has  
19 received more than 450 hours of training for license designations,  
20 and every four years, Mr. DeSaix repeats 55 hours of training to  
21 maintain his state certification. Mr. DeSaix is also a designated  
22 member of the Appraisal Institute with an SRA designation. To  
23 maintain that designation, Mr. DeSaix must complete another 100  
24 hours of training every four years. Notwithstanding this extensive  
25 training, Mr. DeSaix admitted that he is "not quite MAI," a  
26 different designation than SRA.

27 Mr. DeSaix is frequently hired by clients to provide opinions  
28 on the market value of properties. Approximately 80% of Mr.

1 DeSaix's customers are lenders. Mr. DeSaix estimated that another  
2 5% to 10% of his appraisals are performed for buyers, and another  
3 10% of his appraisals are performed for investors.

4 Mr. DeSaix has evaluated both residential and commercial  
5 properties, although during his first twenty years of working as an  
6 appraiser, his work was strictly residential. Mr. DeSaix estimated  
7 that he has performed approximately 3,000 appraisals of single  
8 family residences, including at least one appraisal of a  
9 condominium in the same complex as the Property.

10 Mr. DeSaix explained that appraisers are trained differently  
11 than real estate brokers or agents regarding how to value  
12 properties. According to Mr. DeSaix, appraisers are taught how to  
13 identify the valuation problem, how to select the correct  
14 methodology to apply to the problem, how to identify the relevant  
15 market, how to analyze market conditions, how to identify which  
16 elements of comparison are significant, and how to apply market-  
17 supported adjustments. Mr. DeSaix explained that appraisers must  
18 provide market data to support the valuation and, as a result,  
19 appraisals are the "gold standard" when compared with BPOs.

20 Mr. DeSaix prepared a retrospective appraisal of the  
21 Property's value as of the petition date, January 12, 2012. The  
22 appraisal was offered and admitted into evidence. The appraisal  
23 includes Mr. DeSaix's observations during his inspection of the  
24 Property, a market analysis, an evaluation of comparable sales, and  
25 a conclusion of value. After considering all relevant factors, and  
26 using a sales comparison approach, Mr. DeSaix concluded that the  
27 Property's fair market value on the petition date was \$193,000.  
28

1       To prepare the appraisal, Mr. DeSaix walked through the  
2 condominium complex, visited the interior of the Property, and met  
3 with Ms. Scott-Casas. During that visit, Mr. DeSaix discussed some  
4 of the problems at the Property with Ms. Scott-Casas. Ms. Scott-  
5 Casas mentioned the electrical and ventilation problems, as well as  
6 the problems with the windows. According to Mr. DeSaix, there was  
7 no specific discussion about mold, but Mr. DeSaix did observe a  
8 mold-like substance in multiple locations. Mr. DeSaix stated that  
9 mold is a common problem in the properties which Mr. DeSaix has  
10 appraised, and that Mr. DeSaix has witnessed extensive mold  
11 infestations, but "this was not it."

12       Mr. DeSaix assumed, in what he termed an "extraordinary  
13 assumption," that the condition of the Property during his  
14 inspection was the same as when the petition was filed. Mr. DeSaix  
15 also presumed that similar units on the ground floor shared  
16 problems similar to those at the Property. However, Mr. DeSaix did  
17 not inspect any of the other units or have evidence of their actual  
18 conditions (other than the content of the MLS listings). Mr.  
19 DeSaix testified that Ms. Scott-Casas mentioned other problems in  
20 the complex, including ant infestations. Mr. DeSaix also testified  
21 that he told Ms. Scott-Casas that there appeared to be problems  
22 inherent in the building, and that Ms. Scott-Casas agreed.  
23 Nevertheless, there was no evidence offered of any specific  
24 problems in other units at the complex.

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1       Mr. DeSaix looked at, and considered MLS information for,<sup>7</sup>  
2 four comparables. The first three comparables were from the same  
3 complex as the Property, shared the exact same floor plan, and were  
4 ground floor units. The fourth was in a nearby complex.

5       Mr. DeSaix's first comparable property ("DeSaix 1") was the  
6 same property as Hanna 1. DeSaix 1 sold "as is" in a short sale  
7 for \$193,000 in September 2011. As discussed supra, per the MLS  
8 listing, DeSaix 1 was described as being in "excellent condition."

9       Mr. DeSaix thought it preferable for the second and third  
10 comparables ("DeSaix 2" and "DeSaix 3," respectively) to be ground  
11 level units, because Mr. DeSaix thought that the ground floor units  
12 would share some of the same condition issues as the Property.  
13 DeSaix 2 was Unit 191, was listed for sale at \$202,000,<sup>8</sup> and sold  
14 for \$200,000 in July 2011. Per the MLS listing, DeSaix 2 was in  
15 "great condition . . . beautifully presented and ready for the new  
16 owner." The MLS listing also stated that DeSaix 2 had the best  
17 location in the complex and overlooked the lawns and swimming pool.  
18 The MLS listing further reported that DeSaix 2 had double-paned  
19 windows. By contrast, the Property has single-paned windows and  
20 does not overlook the pool, although Mr. DeSaix testified that the  
21 Property does have a view of the lawns and that the recreation area  
22 is in sight of the Property.

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23                      <sup>7</sup> Mr. DeSaix's appraisal makes specific reference to the MLS  
24 listings which Mr. DeSaix considered. The MLS listings for the  
25 first three of Mr. DeSaix's comparables were included in the  
Debtors' exhibits.

26                      <sup>8</sup> The list prices were not included in Mr. DeSaix's appraisal.  
27 However, the MLS listings identified the list prices for the first  
three of Mr. DeSaix's comparables.

1 DeSaix 3 was Unit 122. DeSaix 3 was originally listed for  
2 sale at a price of \$219,999, but the list price was lowered to  
3 \$192,000. DeSaix 3 sold for \$192,000 in an "as is" short sale in  
4 June 2011. The MLS listing for DeSaix 3 did not describe the  
5 condition of DeSaix 3, and there was no other evidence submitted  
6 about the condition of DeSaix 3.

7 The fourth comparable property ("DeSaix 4") was in a nearby  
8 complex across the street and was located at 2201 Monroe Street  
9 #1104, Santa Clara, California. Mr. DeSaix explained that Mr.  
10 DeSaix did not give much weight to DeSaix 4, which was similar to  
11 the Property but was larger at 790 square feet, was one year  
12 younger than the Property, and was not in a gated community.  
13 DeSaix 4 was a second floor unit in good condition which was listed  
14 for sale at \$183,900 but sold for \$194,000 on January 18, 2012, in  
15 an REO sale.

16 Mr. DeSaix did not make any adjustments to DeSaix 1 or DeSaix  
17 3. Mr. DeSaix believed that DeSaix 1 and DeSaix 3 shared the same  
18 impairments as the Property; however, Mr. DeSaix offered no facts  
19 in support of this belief. Mr. DeSaix made a negative adjustment  
20 of \$7,500 to DeSaix 2, because DeSaix 2 had been upgraded with new  
21 carpet, dual-paned windows, and fresh paint. Mr. DeSaix derived  
22 the \$7,500 deduction by subtracting the sale prices of DeSaix 1 and  
23 DeSaix 3 from the sale price of DeSaix 2, then taking the average.<sup>9</sup>  
24 According to Mr. DeSaix, these price differentials were a  
25 reflection of the market's reaction to the upgrades in DeSaix 2.

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26  
27 <sup>9</sup> The \$7,500 deduction was not correlated to the cost of  
28 replacing the single-paned windows with double-paned windows. Mr.  
DeSaix stated that he did not know what it would actually cost to  
replace the windows. As discussed above, there were many problems  
with the Property in addition to the windows.

1 In deciding on a value of \$193,000 for the Property, Mr. DeSaix  
2 determined that DeSaix 1 was most similar to the Property and  
3 required no condition adjustments.

4 Mr. DeSaix also made no adjustments to the valuations for  
5 short sales or traditional sales. Mr. DeSaix determined that more  
6 than two-thirds of the properties sold during the relevant time  
7 period were distressed properties. Short sales comprised 40% of  
8 the market, and REO sales were another 29% of the market. Mr.  
9 DeSaix stated that these distressed sales were driving the market  
10 during that time, and traditional sales had to compete with the  
11 distressed sales. Therefore, Mr. DeSaix determined that no  
12 adjustment was appropriate to account for the type of sale.

13 Mr. DeSaix also conducted a market analysis for various time  
14 periods. At first, Mr. DeSaix looked back at a two-year period,  
15 then at a one-year period, to capture the market dynamics. Mr.  
16 DeSaix then evaluated the June 2011 to January 2012 time period.  
17 In this analysis, Mr. DeSaix found that sale prices were correlated  
18 to property size, indicating that the market was relatively stable.  
19 For this reason, Mr. DeSaix felt comfortable and confident using  
20 sales up to seven months old.

21 Mr. DeSaix also conducted an analysis of average one-bedroom  
22 condominiums in a nearby geographic area from the June to January  
23 time period, but did not include that analysis in his report. Mr.  
24 DeSaix testified that the data were not significantly different  
25 from Mr. DeSaix's conclusion and did not show anything  
26 contradictory, so Mr. DeSaix discounted that analysis. Mr. DeSaix  
27 also stated that there were not many data points. However, Mr.  
28 DeSaix acknowledged that the analysis could have had an impact on

1 the valuation of up to a few thousand dollars. Mr. DeSaix stated  
2 that the market is imperfect, and that a 2% to 3% difference is  
3 "market noise."

4

5 **II. Conclusions of Law**

6 This is a very close case. The Debtors' and the Creditor's  
7 assertions of the Property's value are only \$10,000 apart, and are  
8 each within only a few thousand dollars of the \$186,166.81 owed to  
9 the senior lienholder, Wells Fargo Bank. The Debtors' proposed  
10 value is 98.3% of the amount owed to Wells Fargo Bank, and the  
11 Creditor's proposed value is 103.7% of the amount owed to Wells  
12 Fargo -- a 5.4% spread. Nevertheless, on the instant record, the  
13 Court cannot find that the Property's value on the petition date  
14 exceeded \$186,166.81.

15 The Debtors' motion is brought under 11 U.S.C. § 506(a)(1),  
16 which states:

17 An allowed claim of a creditor secured by a  
18 lien on property in which the estate has an  
19 interest . . . is a secured claim to the extent  
20 of the value of such creditor's interest in the  
estate's interest in such property . . . and is  
an unsecured claim to the extent that the value  
of such creditor's interest . . . is less than  
the amount of such allowed claim.

21 Initially, the Debtors bear the burden of overcoming any  
22 presumption that the value of the Property stated in the Creditor's  
23 proof of claim is the correct value. See In re Postolica, 2012 WL  
24 1035900, at \*5 (Bankr. N.D. Cal. 2012) (citing In re Southmark  
25 Storage Associates Ltd. Partnership, 130 B.R. 9, 10 (Bankr. D.  
26 Conn. 1991)). Once the Debtors meet this burden, it then becomes  
27 the Creditor's burden of persuasion to demonstrate the value of the  
28 collateral by a preponderance of the evidence. Id. Here, the

1 Debtors' burden is satisfied, because the Creditor's proof of claim  
2 did not specify the value of the Property. Therefore, it is the  
3 Creditor's burden to persuade this Court that the Property's value  
4 on the petition date exceeded \$186,166.81.

5 The parties agree that the Property's value should be fair  
6 market value. This is consistent with the applicable law. See  
7 Associates Commercial Corp. v. Rash, 520 U.S. 953 (1997); Taffi v.  
8 United States (In re Taffi), 96 F.3d 1190, 1192 (9th Cir. 1996).  
9 Fair market value is "the price which a willing seller under no  
10 compulsion to sell and a willing buyer under no compulsion to buy  
11 would agree upon after the property has been exposed to the market  
12 for a reasonable time." Taffi, 96 F.3d at 1192. Nevertheless,  
13 this Court does not need to determine the exact value of the  
14 Property, and instead only needs to determine whether the Creditor  
15 has demonstrated, by a preponderance of the evidence, that the  
16 value of the Property at the time of the Debtors' bankruptcy  
17 petition exceeded \$186,166.81. See In re Serda, 395 B.R. 450, 453  
18 (Bankr. E.D. Cal. 2008).

19 Here, the Creditor has provided an appraisal from Mr. DeSaix,  
20 an experienced and certified appraiser, as to the Property's value.  
21 Without question, the appraisal is more detailed and in many ways  
22 more scientific than the BPO prepared by Mr. Hanna. However, Mr.  
23 DeSaix's appraisal is premised upon unsupported assumptions about  
24 the conditions of the comparable properties.

25 Mr. DeSaix's determination of value was based, in large part,  
26 on the assumption that DeSaix 1 was most similar to the Property,  
27 and on the assumption that DeSaix 1 and DeSaix 3 were impaired to  
28 the same degree as the Property. However, the evidence in the

1 record contradicts these key assumptions. As a result, Mr.  
2 DeSaix's appraisal is not reliable.

3 Virtually the only real evidence of the condition of Mr.  
4 DeSaix's comparables were the MLS descriptions. DeSaix 1 was  
5 described as being in "excellent condition." DeSaix 2 had dual-  
6 paned windows, was described as being in "great condition . . .  
7 beautifully presented and ready for the new owner," and had the  
8 best location in the complex, overlooking the lawn and the swimming  
9 pool. The MLS listing for DeSaix 3 contained no description of the  
10 condition of DeSaix 3.

11 By contrast, the Property was not in excellent condition --  
12 far from it. There was substantial mold damage, which was visible  
13 to the naked eye in six locations and which would be expensive to  
14 repair. There were also electrical problems, a stained and  
15 buckling carpet, water damage in the hallway, a loose and broken  
16 door knob, recurring plumbing issues, and poor ventilation in the  
17 bathroom. Compounding these problems, the Debtors deferred  
18 maintenance on the Property, which houses four people in very close  
19 quarters. The totality of the evidence presented to the Court --  
20 including the testimony of all three witnesses, the appraisal, the  
21 BPO, and the other evidence -- shows that the Property was, and  
22 remains, in comparatively poor condition. Therefore, the  
23 assumption that the Property was most similar to DeSaix 1 and  
24 should be valued at the sale price of DeSaix 1 was not at all  
25 supported. Rather, it was directly contradicted by record  
26 evidence.

27 Without question, DeSaix 2 was also superior to the Property.  
28 Although Mr. DeSaix made a \$7,500 adjustment to DeSaix 2 to account

1 for upgrades made at DeSaix 2, the amount of this adjustment was  
2 tied to Mr. DeSaix's erroneous assumption that DeSaix 1 was similar  
3 to the Property. The Property was in substantially and  
4 significantly worse condition than DeSaix 1. Further, there was no  
5 evidence as to whether similar upgrades had been made to DeSaix 1  
6 or DeSaix 3. For instance, there was no evidence as to whether the  
7 single-paned windows in DeSaix 1 and DeSaix 3 had been replaced  
8 with double-paned windows. There also was no evidence of mold, or  
9 a lack of mold, at DeSaix 1 and DeSaix 3. These two comparables  
10 might have had no mold and superior, double-paned windows. The  
11 Court finds that evidence of mold in DeSaix 1 would have been  
12 inconsistent with the MLS description that it was in "excellent  
13 condition." Therefore, the Court also finds that DeSaix 1 did not  
14 have mold infestation, as did the Property.

15 As Mr. Hanna testified, from a buyer's perspective, a property  
16 without mold is preferable to a property with mold, and the  
17 presence of mold would affect the amount of a buyer's offer. This  
18 testimony was not refuted. The Court agrees with Mr. Hanna in this  
19 regard and extrapolates that a buyer would view double-paned  
20 windows as superior to single-paned windows, and that a property  
21 with double-paned windows would fetch a higher price than a  
22 property without them.

23 If DeSaix 1 and DeSaix 3 had double-paned windows, then an  
24 adjustment should have been made to the sale prices of DeSaix 1 and  
25 DeSaix 3 to account for the Property's single-paned windows. Such  
26 an adjustment might have ranged from as low as Mr. Hanna's \$3,000  
27 estimate to the \$8,000 "special price" offer to upgrade the windows  
28 which had been extended to property owners within the complex, or

1 possibly more. However, Mr. DeSaix did not make any such  
2 adjustment to DeSaix 1 or DeSaix 3 for the windows.

3 In addition, regardless of the windows, Mr. DeSaix's  
4 assumption about the similarities between the Property and DeSaix 1  
5 and DeSaix 3 is, potentially, a \$6,500 assumption. As Ms. Scott-  
6 Casas testified, it could cost up to \$6,500 or more to remediate  
7 the mold and to repair and paint the drywall. If DeSaix 1 and  
8 DeSaix 3 did not share this mold problem -- or if DeSaix 1 truly  
9 were in "excellent condition," as stated in the MLS listing -- then  
10 it would have been appropriate to make a negative adjustment to the  
11 values of those two comparable properties to account for the  
12 Property's relatively poor condition. If an adjustment of \$6,500  
13 were made to account for the cost of remediation, then the adjusted  
14 value of DeSaix 1 would have been \$186,500, and the adjusted value  
15 of DeSaix 3 would have been \$185,500 -- both within a stone's throw  
16 on either side of the \$186,166.81 owed to Wells Fargo Bank,  
17 accounting only for the mold issue.

18 Accounting, then, for "market noise" -- the term used by Mr.  
19 DeSaix -- it is quite likely that the fair market value of the  
20 Property was below \$186,166.81 when the petition was filed. Mr.  
21 DeSaix testified that a 2% to 3% deviation in a property's value is  
22 not statistically significant. Prior to any negative adjustments  
23 to DeSaix 1 and DeSaix 3 to account for the Property's  
24 comparatively poor condition -- adjustments which ought to have  
25 been made, but were not made, by Mr. DeSaix -- the parties'  
26 proposed values are only 5.4% apart and straddle the amount owed to  
27 Wells Fargo by 1.7% (on the Debtors' side) and 3.7% (on the  
28 Creditor's side). Once negative adjustments are made to DeSaix 1

1 and DeSaix 3 to account for the Property's comparatively poor  
2 condition, the spread is even smaller. A negative adjustment of  
3 \$6,500 to DeSaix 1 would bring the adjusted value of DeSaix 1 to  
4 within 0.2% of Wells Fargo Bank's lien, and only 1.9% from the  
5 Debtors' proposed value. This places the Debtor's proposed value  
6 within the market noise range.

7 Put simply, the Creditor did not meet its burden to persuade  
8 the Court that the Property's value exceeded \$186,166.81 on the  
9 petition date. Rather, the preponderance of the evidence  
10 demonstrated that the value of the Property was below \$186,166.81  
11 on the petition date. Therefore, the Debtors' motion to avoid the  
12 Creditor's lien is granted.

13 **IT IS SO ORDERED.**

14                   **\*\*\* End of Memorandum Decision \*\*\***

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